



April 6, 2000

Ms. Kristi LaRoe  
Assistant District Attorney  
Tarrant County  
Office of Criminal District Attorney  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2000-1335

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133890.

The Tarrant County Health Department (the “department”) received a request for the 1999/2000 proposals for Ryan White I funding in a number of categories. You assert no exceptions in order to withhold the requested information. However, as third party proprietary interests may be implicated, you notified the multiple third parties of the request pursuant to section 552.305 of the Government Code.<sup>1</sup> Section 552.305(d) requires the department to notify the third parties of the request for an attorney general decision. Third parties whose privacy or proprietary interests may be involved may submit in writing reasons why the information is excepted from public disclosure. *See* Gov’t Code § 552.305(b) (permitting interested third party to submit to attorney general reason why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). Only one party, Wellness4 Life, Inc., submitted arguments for withholding their information to this office. The other third parties did not submit reasons for explaining why the requested information should not be released. Therefore, we have no basis to conclude that their information is excepted from disclosure. *See* Gov’t Code § 552.110(b).

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<sup>1</sup>We note that the notices sent to the third parties are not in the form prescribed by this office. That form can be found in Appendix C of the 2000 Texas Public Information Handbook. The handbook is available online at the Office of the Attorney General’s web site at [www.oag.state.tx.us](http://www.oag.state.tx.us).

Section 552.301(e)(1)(D) of the Government Code requires a governmental body requesting an attorney general's decision under section 552.301(a) to submit "a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested." Gov't Code § 552.301(e)(1)(D). Pursuant to section 552.305, the department, in its letters to the interested third parties, stated that a copy of the requested information was provided to this office. However, the department submitted a "representative sample" of the requested documents. When a governmental body submits a representative sample of voluminous information, those submitted documents must be truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This office does not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. Therefore, in this instance where multiple third party privacy or proprietary interests are at issue, in order for this office to make a determination under sections 552.305 and 552.110, a representative sample is inadequate documentation to submit to this office.

Wellness4 Life, Inc. submitted arguments to this office asserting that their specialized programs create their niche in the service provider area. They assert that the disclosure of their particular Ryan White I grant proposal would result in the loss of their competitive advantage with the larger service agencies. However, the representative sample the department submitted relates to another organization's Ryan White I grant proposal. Based on Wellness4 Life, Inc.'s assertions, their grant proposal would contain substantially different types of information than that submitted to this office.<sup>2</sup> Consequently, the department did not comply with the requirements of section 552.301(e)(1)(D). Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.-- Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because the responsive information that the department did submit for our review does not comply with section 552.301(e)(1)(D), this office is unable to determine whether the requested records contain information that is confidential by law. Accordingly, we conclude that the department must release to the requestor the information submitted for our review, as well as any other information that is responsive to the request at issue. We caution that the Public Information Act provides for criminal penalties for the release of confidential information. *See* Gov't Code § 552.352.

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<sup>2</sup>Because the department failed to submit for our review the specific information from Wellness4 Life Inc. that is responsive to the present request, or a proper representative sample of the responsive information, this office is unable to consider the merits of the arguments that Wellness4 Life Inc. submitted to this office.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

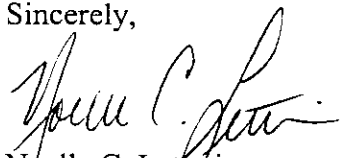
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Noelle C. Lettieri  
Assistant Attorney General  
Open Records Division

ncl/nc

Ref: ID# 133890

Encl. Submitted documents

cc: Mr. Mike McKay  
AIDS Outreach Center  
901 West Cannon  
Fort Worth, Texas 76104  
(w/o enclosures)

Mr. Adrian Davis  
Wellness4 Life Inc.  
1401 South Main  
Suite 149  
Forth Worth, Texas 76104  
(w/o enclosures)

Ms. Mary L. Jackson, R.N.  
801 Seventh Avenue  
Fort Worth, Texas 76102  
(w/o enclosures)

Mr. John Morris  
1440 West Mockingbird Lane, Suite500  
Dallas, Texas 75247-4929  
(w/o enclosures)

Mr. Steve Dutton  
2200 Ephriham Avenue  
Fort Worth, Texas 76106  
(w/o enclosures)

Ms. Amy Chairez  
3840 Hulen  
Hulen Towers North  
Fort Worth, Texas 76107  
(w/o enclosures)

Ms. Jane Jensen  
1800 University Drive, Rm. 131  
Fort Worth, Texas 76107  
(w/o enclosures)

Reverend Kevin Bailey  
3208 Wilbarger  
Fort Worth, Texas 76119  
(w/o enclosures)

Ms. Mary Smith  
2701 Burchill Road North  
Fort Worth, Texas 76105  
(w/o enclosures)

Mr. E. Blaine Parrish  
AIDS Resources of Rural Texas  
111 North Main  
Weatherford, Texas 76086  
(w/o enclosures)

Ms. Janet Neff  
1500 Main Street  
Fort Worth, Texas 76104  
(w/o enclosures)

Ms. DeeJay R. Johannessen  
901 Lake Street  
Fort Worth, Texas 76102  
(w/o enclosures)

Mr. Roger Wedell  
1425 Pennsylvania Avenue  
Fort Worth, Texas 76104  
(w/o enclosures)